IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

FRIDAY, THE 8TH JUNE 2007 / 18TH JYAISHTA 1929

WP(C).No. 10662 of 2007(T)

PETITIONER: 1

AWH COLLEGE OF EDUCATION,CALICUT P.O,
KALLAI,CALICUT,REP.ITS CORRESPONDENT,
K.P.MOHAMMED.

BY ADV. SRI.P.RAVINDRAN

RESPONDENTS:

1. THE CALICUT UNIVERSITY,REP.BY ITS REGISTRAR,CALICUT.

2. THE REGISTRAR UNIVERISTY OF CALICUT, CALICUT.

3. STATE OF KERALA REP.BY ITS SECRETARY, (HIGHER EDUCATION),GOVERNMENT OF KERALA, THIRUVANANTHAPURAM.

4. NATIONAL COUNCIL FOR TEACHER EDUCATION, REPRESENTED BY ITS REGIONAL DIRECTOR,SOUTHERN REGIONAL COMMITTEE,IST FLOOR CSD BUILDING,HMT POST BANGALORE- 560 031.

BY ADV. SRI.V.M.KURIAN, SC, SRC-NCTE
GOVERNMENT PLEADER SRI.BENJAMIN PAUL
SRI.P.C. SASIDHARAN - SC CALICUT UNIVERSITY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 08/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C)NO.10662/07

APPENDIX

PETITIONER'S EXHIBITS

Ext.P1: TRUE COPY OF THE GOVERNMENT ORDER DATED 31.8.04.

Ext.P2: TRUE COPY OF THE APPLICATION DATED 7.10.04.

Ext.P3: TRUE COPY OF THE CONDITIONAL APPROVAL DATED 26.07.06.

Ext.P4: TRUE COPY OF THE ORDER OF THE NCTE DATED 22.09.06.

Ext.P5: TRUE COPY OF THE JUDGMENT DATED 2.1.07 IN W.P.33627/06.

EX.P6: TRUE COPY OF NEWS ITEM PUBLISHED IN MALAYALA MANORAMA ON 9.3.2007.

Ext.P7: TRUE COPY OF THE REPORT OF INSPECTION DATED 19.2.07.

Ext.P8: TRUE COPY OF THE DECISION OF THE UNIVERSITY DATED 07.03.07.

Ext.P9: TRUE COPY OF THE COMMUNICATION FOR THE PUBLIC INFORMATION OFFICER DATED 24.4.2007.

Ext.P10 TRUE COPY OF THE COVERING LETTER DATED 31.10.2006.

RESPONDENTS EXHIBITS

Ext.R1(A): TRUE COPY OF THE COMPLAINT PREFERRED BY THE STUDENTS OF AWH SPECIAL COLLEGE.

Ext.R2(B): TRUE COPY OF THE COMMUNICATION TO THE PETITIONER.

/TRUE COPY/

PA TO JUDGE.

S. SIRI JAGAN, J.

W.P.(C)NO.10662 OF 2001

DATED THIS THE 8th DAY OF JUNE, 2007

JUDGMENT

The petitioner is a College running B.Ed course. They applied for permission to start M.Ed course in their College. They have complied with the statutory provisions up to getting approval of the National Council for Teacher Education, who granted approval in accordance with Section 15(3) of the N.C.T.E. Act. On receipt of approval from NCTE, the petitioner approached the 1st respondent University for grant of affiliation, on receipt of which alone they can start the course. Since there was delay in granting affiliation by the University, the petitioner approached this Court. This Court directed the University to take a decision on the petitioner's request for affiliation. Still the University did not communicate any decision to the petitioner. When this writ petition came up for admission, the learned counsel for the University submitted that a decision has been taken rejecting the request for affiliation. An interim order was passed directing the University to give a copy of that decision to the petitioner. The University did not issue copy of the proceedings to the petitioner

despite the direction of this Court. The petitioner thereafter filed an application under the Right to Information Act and obtained a copy of the decision of the University along with a copy of the report of the Inspection team stated to be based on which decision of the University was made. Ext.P7 is the report of the Inspection team and Ext.P8 is the decision of the University. The petitioner is challenging Ext.P8 decision of the University and for a declaration that the petitioner is entitled to grant of affiliation for conducting M.Ed Course.

2. A counter affidavit has been filed on behalf of the University. In the counter affidavit the relevant provisions of the University Statutes have been extracted. Thereafter, it is stated that the recognition by the NCTE is subject to provisions under the Kerala University Act and Statutes. The contention of the university is that the Inspection Commission after conducting the inspection, in its report has pointed out many short comings based on which the Syndicate of the University in its meeting on 7.3.1007 resolved that affiliation need not be granted since the petitioner has not fulfilled all the required conditions for starting M.Ed Course.

3. It is stated in the counter affidavit that Ext.R1(a) communication has been forwarded to the petitioner (The petitioner submits that Ext.R1(a) has not been received by the petitioner even today). The contention of the University is that in view of Ext.R1(a) as well as Ext.P7 report, the petitioner is not entitled to affiliation as

applied for by them.

4. I have heard the learned counsel on both sides in detail. Before going into the rival contentions, I am constrained to make some observations regarding the conduct of the University. When an institution applies for affiliation they are entitled to have their application considered within a reasonable time and the decision communicated to them with the reasons for such decision. In this case, till today, the University has not communicated their decision to the petitioner. Of course, the learned counsel for the University would say that Ext.R1 (a) has been sent by registered post to the petitioner. But they have not stated in their counter affidavit as to whether the petitioner has received the same. Nothing is produced before me to show that Ext.R1(a) has either been sent by registered post or that the same has been received by the petitioner. In any event, Ext.R1(a) is dated only 22.5.07 and much before that, the petitioner had applied to the university for affiliation under the Right to Information Act and obtained a copy of the decision of the University as well as a copy of the report which only have been produced as Exts.P7 and P8 along with an application for amendment of the writ petition which application was allowed as early as on 4.5.07. It is two weeks thereafter that Ext.R1(a) is seen passed. Even going by the averments of the University, Ext.R1(a) has been issued after the petitioner obtained the same under the Right to Information Act.

5. Still further in Ext.R1(a) or in Ext.P8 there is absolutely no mention as to what are the required conditions which have not been fulfilled by the petitioner. I am constrained to say that this is not the way the University should act. The University, as a responsible institution should act in a reasonable manner and should not keep the Colleges guessing as to the reasons for rejection of the application. It is not evident from the records before me that this University has behaved in such a manner expected of a University which is to show the proper way for the students of the institution. First of all, the petitioner had to go from pillar to post to know the fate of their application. In spite of repeated orders from this court, they are not prepared to communicate their decision to the petitioner. Even after filing of this writ petition and even after a direction to the University to furnish a copy of their decision, they have not furnished the same. The University has driven the petitioner to other remedies under the Right to Information Act to enable them to know what is the fate of their application. I condemn in strong words the attitude of the University in this matter which is quite unbecoming of a University

6. Coming to the merits of the case, it is now submitted before me by the University that the application for affiliation submitted by the petitioner has been rejected on the ground that the institution has not fulfilled all the required conditions for starting M.Ed Course. But even in their counter affidavit they have not

stated as to what are the conditions, which the petitioner has not fulfilled except that the petitioner has not fulfilled the required conditions. Even for ascertaining what are those conditions I have to rely on the documents which the petitioner obtained by invoking their rights under the Right to Information Act, which is Ext.P7 report of the Committee. Although the University has not even in their counter affidavit stated as to what are the required conditions not fulfilled by the petitioner, I will consider that question on the basis of Ext.P7, which the University does not dispute is the report of the Committee. The recommendations of the Inspection Commission given in Ext.P7 reads as follows.

> " 1. The college is having land and building.
>
> 2. Physical infrastructure is adequate more furniture is to be procured and fulfilled.
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> 3. Library facilities to be strengthened to suit the needs of M.Ed students by procuring books on Educational Research, Reference books and journals. Management have to take necessary steps urgently.
>
> 4. Management have to furnish an undertaking that the faculty members already identified will be appointed permanently."

7. Final recommendation in Ext.P7 reads thus:

> "In view of the above, the Syndicate may take an appropriate decision in this regarding the granting of affiliation to the course (M.Ed) for the year 2006-07."

8. From the very defects pointed out and from the very language used by the Inspection Committee, it is abundantly clear

that the committee did not consider these so called defects to be that serious enough to warrant the rejection of the application for affiliation itself but only left to the Syndicate to decide on the same. I am inclined to think that it was because those defects were not serious enough to warrant rejection of the application for affiliation that the University could not bring themselves to state the same in the proceedings rejecting the application or in the counter affidavit filed before this Court.

9. In this connection, I am also at a loss to understand the attitude of the University while presenting the case . The learned counsel for the University would submit that the University do not usually convey each and every defect pointed out by the Committee to the applicants for affiliation and that it is for the applicant to find out the defects and cure the same and file a fresh application for affiliation. This is to say the least, quite unreasonable. Without knowing what are the defects, the petitioner would not be able to cure those defects even for applying for the next year. Therefore, the University has a duty to convey to the petitioner which are the requirements which they have not fulfilled which resulted in the rejection of their application. The date of inspection is 19.2.2007, the report is dated, 21.2.2007. If the University had communicated to the petitioner that these are the defects pointed out by the Inspection Team immediately thereafter the petitioner could have taken appropriate steps to see that the requirements pointed out by

the Inspection Commission are fulfilled so that they could approach the University again after fulfilling the same which should ideally be the attitude of the University, who is interested in the well being of the student community of the State. In the above circumstances, I feel that the University should consider the matter afresh after giving the petitioner an opportunity to cure these defects.

10. In the above circumstances, this writ petition is disposed of with the following directions.

The petitioner shall within two weeks from today cure these defects mentioned in Ext.P7 and communicate to the University that they have complied with the requirements mentioned in Ext.P7 report of the Inspection Team. On receipt of the same, the University shall within a further period of two weeks consider the same and pass orders on the application for affiliation submitted by the petitioner. If the Syndicate is not in session within that time, the Vice Chancellor of the University shall exercise his powers under Section 10(13) of the Calicut University Act and take a decision. I was originally inclined to grant costs also because of the cantankerous attitude of the University in the matter, however, exercising restraint, I refrain from doing so.

S. SIRI JAGAN, JUDGE

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